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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,935	03/22/2004	Cheryl F. Cohen	CFC 0001	1026

7590
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2409 Church Road
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12/21/2005

EXAMINER

PASCUA, JES F

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3727

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/805,935
Filing Date: March 22, 2004
Appellant(s): COHEN, CHERYL F.

MAILED

DEC 21 2005

Group 3700

Cheryl F. Cohen
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/06/2005 appealing from the Office action
mailed 05/20/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,154,332	WILLIAMS et al.	10-1992
3,530,919	MAY	09-1970

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-9, 11-19 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams et al. as set forth in the Final Office action mailed 05/20/2005.

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams et al. as set forth in the Final Office action mailed 05/20/2005.

Claims 10 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams et al. in view of May as set forth in the Final Office action mailed 05/20/2005.

(10) Response to Argument

Appellant argues that the Examiner has improperly failed to give patentable weight to the structural limitation of a "backpack" as found in the preamble of the claims because the Williams et al. patent is directed to an enclosure for a backpack and the specification of the present application does not mention, whatsoever, any type of enclosure other than a backpack. It must be noted that Williams et al. discloses the invention as claimed. The fact that it discloses additional structure not claimed is irrelevant. Williams et al. clearly discloses a backpack (58) comprising an enclosure that has back panel (28) and a front panel (26) forming a main compartment. There is nothing in appellant's claims that explicitly require the "at least two panels forming a main compartment" of the backpack itself. A broad, reasonable interpretation of appellant's claims does not preclude backpack within an enclosure formed by a plurality of panels as disclosed by Williams et al.

In response to appellant's argument that Williams et al. fail to show certain features of appellant's invention, it is noted that the features upon which appellant relies (i.e., a backpack "formed by" a plurality of panels) are not recited in the appealed claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, Williams et al. clearly discloses the releasable securing device (14c) extending along front panel (26), top panel (32) and back panel (28) for accessing the main compartment of the enclosure that surrounds the backpack (58), thus meeting the limitations of appealed claim 22.

Regarding appellant's argument that Williams et al. does not show the backpack with zippers oriented in a substantially lateral orientation when the backpack is disposed in an upright position, appellant is reminded that that the appealed claims do not explicitly recite zippers on a backpack. Regardless, Williams et al. clearly shows the zipper (14c) extending laterally across the top panel (32) when the backpack is oriented in an upright position as shown in Fig. 4, thus meeting the limitations of appealed claims 9 and 19.

Regarding appellant's argument that the zipper of Williams et al. does not extend across a side panel. Appellant's nomenclature for the panel between the front and back panels of the backpack fails to structurally distinguish it from the top panel (32) of Williams et al., which is located between front panel (26) and back panel (28).

Therefore, the zipper (14c) extending across the top panel (32) in Williams et al. meets the limitations of appealed claims 3 and 14.

Appellant argues that the resealable securing device of Williams et al. does not extend sufficiently along the back panel of the backpack so that the terminating end rests against a wearer's body when worn. The zipper (14c) of Williams et al. terminates on the back panel (28) just above the terminating ends of zippers (14a, 14b) where the upper attachment portions of the backpack shoulder straps (52) exit (as shown in Figs. 3A and 4). The Examiner maintains that backpack shoulder straps are attached to the backpack at a location below the shoulders of a wearer. See Fig. 5. Therefore, the location of the terminating ends of the zippers (14a, 14b, 14c) in Williams et al. with respect to the attachment location of backpack shoulder straps to the backpack would inherently result in the terminating end of the zipper (14c) resting against a wearer's body. Appellant's reliance on Fig. 5 of Williams et al. to show the terminating end not resting on the back of a user is misplaced because Fig. 5 does not accurately portray the terminating end of the zipper (14c) being located adjacent the location where the backpack shoulder straps exit the enclosure as shown in Fig. 4. Regarding the language "wherein the releasable securing device is adapted to extend sufficiently along the back panel of the backpack so that the terminating end rests against a wearer's body when worn", it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

In response to appellant's argument that there is no suggestion to combine the Williams et al. and May references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, May suggests that it is known in another shoulder supported bag to extend the zipper (11) along a plurality of walls and at least substantially halfway along the wall carrying the shoulder straps (17, 18) in order to fully access the main compartment of the bag.

In response to appellant's argument that the combination of Williams et al. and May would not provide sufficient clearance for the shoulder straps to pass unobstructed through the enclosure and permit the backpack to be worn with the enclosure in place, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Jes F. Pascua
Primary Examiner

Conferees:


Nathan J. Newhouse, Supervisory Patent Examiner


Robin A. Hylton, Primary Examiner